

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HENRY BRANDON,
Plaintiff,
v.
LVMPD, *et al.*,
Defendants.

Case No.: 2:20-cv-00464-RFB-DJA

ORDER AND REPORT AND RECOMMENDATION

Pending before the Court is Defendant's Motion for Pre-Filing Restrictions (ECF No. 44), filed on July 28, 2020. Plaintiff filed a Response (ECF No. 54) on August 13, 2020, under seal. Defendant filed a Reply (ECF No. 56) on August 20, 2020. The Court finds this matter to be properly resolved without a hearing. LR 78-1.

I. BACKGROUND

18 Defendant seeks to deem Plaintiff a vexatious litigant and bar him from making additional
19 filings in this case until the Court rules on its pending motion to dismiss. It highlights that
20 Plaintiff's initial complaint failed to include any federal claims, which he then filed multiple
21 amended complaints without seeking leave of the Court. Defendant also underscores that Plaintiff
22 has filed a dozen or more motions that do not contain valid requests for relief along with duplicates
23 and voluminous supplements. Plaintiff responds with a sealed filing that is largely nonsensical
24 and does not set forth any understandable opposition to Defendant's request. Defendant replies
25 that since the filing of the instant Motion, Plaintiff has filed three new motions, an unauthorized
26 surreply, a memorandum, and a second supplement. Therefore, Defendant requests that he be
27 barred from future filings in this case without seeking prior leave from the Court or Defendant be
28 relieved of the obligation to respond to his serial filings unless needed to by the Court.

1 **II. DISCUSSION**

2 A district court has the “inherent power to enter pre-filing orders against vexatious
 3 litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (citing 28
 4 U.S.C. § 1651(a)). Because a pre-filing order implicates a litigant’s right of access to the courts,
 5 the court should enter such an extreme remedy “only after a cautious review of the pertinent
 6 circumstances.” *Id.* Prior to entering a pre-filing order, the court must give the litigant notice and
 7 an opportunity to be heard. *Id.* (citing *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990)).
 8 The court must set forth an adequate record for review and make “substantive findings about the
 9 frivolous or harassing nature of the plaintiff’s litigation.” *Id.* “An adequate record for review
 10 should include a listing of all the cases and motions that led the district court to conclude that a
 11 vexatious litigant order was needed.” *Id.* at 1059 (quoting *De Long*, 912 F.2d at 1147). “Flagrant
 12 abuse of the judicial process cannot be tolerated because it enables one person to preempt the use
 13 of judicial time that properly could be used to consider the meritorious claims of other litigants.”
 14 *De Long*, 912 F.2d at 1148.

15 To determine whether the litigant’s conduct is frivolous or harassing, the court evaluates
 16 “both the number and content of the filings as indicia of the frivolousness of the litigant’s claims.”
 17 *Id.* (quotation omitted). A pre-filing order “must be narrowly tailored to closely fit the specific
 18 vice encountered.” *Id.* (quotation omitted). Whether to enter a pre-filing order against a vexatious
 19 litigant lies within the court’s discretion. *Id.* at 1056. The court should examine five factors: (1)
 20 the litigant’s history of litigation and in particular whether it entailed vexatious, harassing, or
 21 duplicative lawsuits; (2) the litigant’s motive in pursuing the litigation, e.g., does the litigant have
 22 an objective good faith expectation of prevailing?; (3) whether the litigant is represented by
 23 counsel; (4) whether the litigant has caused needless expense to other parties or has posed an
 24 unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be
 25 adequate to protect the courts and other parties. *Williams v. Nat’l Default Servicing Corp.*, 2017
 26 U.S. Dist. LEXIS 4111, at 12-14 (D. Nev. Jan. 10, 2017) (citing *Molski v. Mandarin Touch Rest.*,
 27 347 F.Supp.2d 860, 863-64 (C.D. Cal. 2004)).

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1 "No one, rich or poor, is entitled to abuse the judicial process." *Tripathi v. Beaman*, 878
2 F.2d 351, 353 (10th Cir. 1989). Plaintiff does not have a good faith motive in pursuing this
3 frivolous litigation and he has abused the judicial process by filing a lawsuit that is likely to be
4 dismissed. Indeed, he has filed five different complaints and about seventeen motions in this case
5 since its short history of being open, most of which have been denied and found to be meritless.
6 Moreover, Plaintiff has shown an utter disregard for the Federal Rules of Civil Procedure and this
7 Court's own Local Rules. He has failed to cite to the correct standards in his requests for relief
8 and largely lacked any citation to relevant law. Plaintiff's actions have posed an unnecessary
9 burden on this Court and are a vexatious abuse of the judicial process. Given his actions over the
10 past month, Plaintiff is likely to continue his abuse of the judicial process. Requiring Plaintiff to
11 seek leave prior to filing new documents in this case is narrowly tailored because he will still have
12 access to this Court by requesting leave.

Moreover, Plaintiff has been provided with reasonable notice and an opportunity to oppose the pre-filing restrictive order through the briefing process. He responded with a sealed filing that is not accompanied by any motion to seal as required by the Local Rules and does not appear to contain any information or documents that would warrant it remaining sealed. As such, the Court will order it unsealed. Plaintiff has not set forth any grounds for the Court to decline to impose pre-filing restrictions as outlined above. However, he will be provided with one more opportunity to oppose the Court's recommendation via the objection process.

III. CONCLUSION

ORDER

IT IS HEREBY ORDERED that Plaintiff's Response (ECF No. 54) be **unsealed**.

RECOMMENDATION

24 **IT IS HEREBY RECOMMENDED** that Defendant's Motion for Pre-Filing
25 Restrictions (ECF No. 44) be **granted** and Plaintiff be deemed a **vexatious litigant**.

26 **IT IS FURTHER RECOMMENDED** that Plaintiff be required to seek leave of the
27 Court before making any additional filings in this action while Defendant's Motion to Dismiss
28 (ECF No. 20) is pending.

NOTICE

This report and recommendation is submitted to the United States District Judge assigned
to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
may file a written objection supported by points and authorities within fourteen days of being
served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
1153, 1157 (9th Cir. 1991).

Dated: August 21, 2020.

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Daniel J. Albregts
United States Magistrate Judge